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lowed by inadequate grasp of the ideas which they represent. This illustration is typical of a lack of close analysis which pervades the book. There is also insufficient statement of the historical development of legal doctrine. In his statement of the history of consideration, the author briefly restates Judge Holmes' theory of the development of assumpsit from debt, and does not refer to the later writings which have shown that theory to be erroneous.

Some will think that the defects we have noticed are of slight importance; that the proper function of a legal treatise is to state the law here and now, and that it is useless to occupy space by telling what English law is, or what the law used to be, or to attempt to analyze the principles of the law further than the courts have done. We believe, however, that these things are highly practical. With the vast multiplication of decisions, the only safety is in seeking by every method—comparative, historical, and analytical—the fundamental principles of the law.

THE PRINCIPLES OF THE ADMINISTRATIVE LAW OF THE UNITED STATES. By Frank J. Goodnow. New York: G. P. Putnam's Sons. 1905. pp. xxvii, 480.

After an interval of twelve years this work on American Administrative Law follows one by the same author on Comparative Administrative Law. With a few minor exceptions the system of treatment adopted in the earlier work is adhered to. This is of especial advantage in a study which is of so recent adoption in the United States. The only corresponding chapter of the earlier work, bearing on American administration, whose excision from the new is complete, is Chapter IV of Book V, "The Socialistic Action of the Administration." The other most important changes in the system of treatment are found in the expansion of the three sections of Chapter I of Book VI, concerning the formation of the control over the administration, to three chapters in the new work, and in the title of Chapter IV of the same book, which, if the old terminology had been employed, would have been "The Administrative Jurisdiction in the United States," but which appears as "Extraordinary Judicial Remedies."

Perhaps the chief difference in substance between this work and that on Comparative Administrative Law—if the expansion in treatment of the American Law, and the exclusion of the European Law, are excepted—is found in the attention given to the functions of government, and their separation. Professor Goodnow states that there are but two functions of government, one the expression of the state will, the other the execution of the state will; the first denominated Politics and the second Administration. Though the distinction may be said to be implicit in his earlier work—it is employed, for instance, in Book V, on administrative action—its full development has been a fruit of the years which have intervened. Its first extended presentation was made in the author's "Politics and Administration" which appeared in 1899. It has had a great influence on the present book, even in more detailed phases, as in the discussion of the legislature's power of special legislation, appointment, and removal. Sacrificing the Montesquieu doctrine as it does, this distinction is none the less

maintained even in France, and at the hands of so authoritative a writer as M. Dluccocq. A searching discussion of the separation of powers is most important in the United States at the present time, and there is none that approaches, even remotely, this by Professor Goodnow. It is surprising how many notable French writers, as M. René Jacquelin and M. E. Arthur have within the last few years devoted monographs to this subject. If the subject had received slightly corresponding attention in the United States, perhaps the blindness of Congress and other departments of the government with respect to administrative functions—as seen in the recent railroad rate inquiry—would have been cured in a measure. It certainly involves some very serious questions of national public law.

In his discussion of the American system Professor Goodnow indicates clearly that the principles which distinguish the national administration are, in important respects, very different from those which distinguish the state administration, and both are to be distinguished from the local administration. This is worthy of particular notice because it is so frequently overlooked. These differences are seen for example, in a comparison of the President's power of removal with that of the governor, or the municipality's liability for tort with that of the state or national government.

The discussion of the finality of administrative determinations will be of great present interest to many. Professor Goodnow does not take the position assumed by some foreign commentators on our administrative system who have refused to recognize the American Court of Claims as having Administrative jurisdiction because an appeal might be taken from its decision to the Supreme Court and judicial control thus be exercised. Nor does he go to another extreme which asserts the irresponsibility of the administration and declares that a judicial court cannot properly be put over an administrative office in the United States. Professor Goodnow describes our system as one to which the conception of the responsibility of the administration, except as regards the executive head, is foreign. It is a system in which the finality of the administrative determination varies, for instance, as the administrative tribunal is state or national, as the court whose control is sought derives its authority from the Court of King's Bench, or otherwise. But he makes it perfectly clear that the determinations of the administrative are final in many cases. This finality of the administrative determinations appears not as a result of the principle of separation of powers though that has played its part, but as a result of the considerations of justice and judicial and administrative expediency as they have appealed to the courts.

Of closely related importance is the treatment of administrative regulations, the ordinance power of the administration. The power to issue general regulations is described as a legislative function of the administrative. It is not warped into place with the assertion that it is "administrative." Rather there is frank recognition of the difficulty of distinguishing from legislation the power to make that class of regulations which fixes the rights and duties of citizens. It is shown that the justification for the recognition of this power as falling within the scope of executive authority is historical. It is evident that the author does not share the convictions of those who maintain

that legislation is one of the proper, even, necessary methods of administration.

From both the legal and historical standpoint the book contains many things that are richly suggestive. There is very little in our legal or political literature so penetrating as for example the exposition of the effects of confinement of the principle of separation of powers to the central government.

The scheme seems not to permit of the treatment of some subjects which no doubt would have been considered in a more extensive treatise, such as the processes of the central administration, *ex parte* administrative proceedings, contests before the patent office, protests to the land office, etc. The book remains to be written which shall analyze the decisions of the Comptroller of the Treasury, those of the Commissioners of Internal Revenue, of the Board of General Appraisers, and similar administrative tribunals though it is to be hoped that the time is not far distant when they will be given as satisfactory treatment as the Interstate Commerce Commission and its decisions have recently received.

Professor Goodnow's book is prepared for the use of "students of politics" and should prove of great value to such students as to students of history and public law generally. It is not written for the legal profession directly, but to those lawyers who seek more than a working tool in their profession, a true appraisal of the administrative law, it will appeal. The writing of such a work moreover is a signal public service. This will be thoroughly appreciated by any one who has been a close witness of the problems which have troubled the national government during the past year.

AMERICAN RAILROAD RATES. Walter Chadwick Noyes. Boston: Little, Brown, and Company. 1905. pp. 277.

This timely little book is a masterpiece in its sphere. Whether the reader be in the ranks of the beseigers or the defenders of the railroads, he would wish his adversary to read this book before continuing this debate. He would feel that the fog would then be dispelled and the issues clearly defined. That is the great value and the charm of the work—its simplicity and its fairness to both sides to the controversy.

The title page states that the author is a Connecticut Judge, the President of a railroad, and the author of other legal treatises. Every page bears the hall-mark of the author's broad preparation for his task and gives evidence of his mature and certain knowledge of the subject in hand. The view-point of the judge is everywhere evident, and it is indeed refreshing to the wearied student of recent broadsides of the demagogues, and special pleadings of the railroads, to hear the evidence and arguments pro and con so ably and dispassionately summed up by an impartial umpire. No less effective is the air of reality and vitality lent to this highly technical subject by the telling examples and pat illustrations of every abstract principle. The railroad president in the author seems to be a repository of such concrete cases. No sooner does one, as a mere theorist, announce his panacea, than the graduate traffic manager crumples these theories by telling you that this very scheme was tried and found wanting on the Mobile and